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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1932

No. 424

WALKER WOOD, SECRETARY OF STATE OF THE STATE OF MISSISSIPPI, ET AL., APPELLANTS,

vs.

STEWART C. BROOM

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI

FILED OCTOBER 3, 1932

(37,121)

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INDEX

	Original	Print
Record from district court of the United States, Southern Mississippi	1	1
Bill of complaint	1	1
Exhibits to bill of complaint:		
"A"—House Bill No. 197	24	14
"B"—Map showing congressional districts and population	27	16
"C"—Population of Mississippi by counties	28	17
Order for organization of three-judge court	30	18
Motion to dismiss bill	32	19
Amendment to bill of complaint	33	19
Order allowing amendment, overruling motion to dismiss bill, and granting temporary injunction	34	20
Answer of defendants	38	22
Motion setting down for hearing	40	23
Final decree	41	23
Opinion, Foster, J., statement of facts, and conclusions of law	45	26

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 4, 1932

	Original	Print
Dissenting opinion, Holmes, J.	48	28
Petition for appeal with supersedeas	56	33
Order denying application for supersedeas, Cardozo, J., U. S. Supreme Court	60	35
Petition for appeal	61	36
Order granting appeal	62a	37
Assignments of error	63	38
Bond on appeal (omitted in printing)	64a	
Præcipe for transcript of record	65	39
Clerk's certificate (omitted in printing)	67	
Statement of points to be relied upon and designation to print entire record	68	40

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

In Equity. No. 407

STEWART C. BROOM, Complainant,

v.

WALKER WOOD, Secretary of State, et al., Defendants

BILL OF COMPLAINT—Filed July 25, 1932

To the Honorable Judges of the District Court of the United States in and for the Southern District of Mississippi:

The Complainant, Stewart C. Broom, humbly complaining of and against the Defendants, Walker Wood, Secretary of State of the State of Mississippi, Greek L. Rice, Attorney General of the State of Mississippi, M. S. Conner, Governor of the State of Mississippi; W. W. Downing, Chancery Clerk and Clerk of the Board of Supervisors of Hinds County, Mississippi and Bob Neely, Mrs. H. L. Morehead and J. W. Vaughan, Election Commissioners of Hinds County, Mississippi, respectfully shows unto the Court as follows:

That the Complainant is a citizen of the United States, a citizen of Hinds County in the State of Mississippi and of the said State of Mississippi and is also a taxpayer and qualified elector in and of said County and State and under [fol. 2] the law is qualified to participate as an elector and candidate in the elections, both primary and general, to be held in the State of Mississippi in the year 1932 for the nomination and election of Representatives in Congress from the State of Mississippi, to represent said State in the National House of Representatives for the ensuing two years.

That the Defendant, Walker Wood is the duly elected, qualified and acting Secretary of State of the State of Mississippi and performs his official duties at the State Capitol in the City of Jackson, Mississippi.

That the Defendant, Greek L. Rice, is the duly elected, qualified and acting Attorney General of the State of Mississippi and performs his official duties at the said Capitol.

That the Defendant, M. S. Conner is the duly elected, qualified and acting Governor of the State of Mississippi, and performs his official duties at said Capitol.

That the Defendant, W. W. Downing, is the duly elected, qualified and acting Clerk of the Chancery Court, Clerk of the Board of Supervisors and Auditor of Hinds County in the State of Mississippi, and is also a resident citizen of said County.

That the Defendants, Bob Neely, Mrs. H. L. Morehead and J. W. Vaughan, are the duly appointed, qualified and acting Election Commissioners of Hinds County and are also resident citizens of Hinds County, Mississippi.

That this Complainant brings this suit as a citizen of the United States, a qualified elector of Hinds County in the [fol. 3] State of Mississippi, in his own right and in his own behalf and also for and on behalf of all citizens and qualified electors of Hinds County in the State of Mississippi, and also all taxpayers of said County and State and all the inhabitants of said State of Mississippi, and all interested citizens, taxpayers, electors and inhabitants of said County and of said State, similarly situated and similarly affected and for such others as may join herein.

That under the laws of the State of Mississippi governing the holding of elections, both general and primary, for the nomination and election of representatives in Congress of the United States, the duties of the Defendants herein are as follows:

The Secretary of State is required to receive the tabulated returns of all primary elections, and to preserve and keep same as records of his office, such tabulations being furnished to him by the State Executive Committee of the political party holding the primary. After general elections, the Secretary of State is required to receive the returns of the election, to tabulate said returns, and to declare therefrom the winner or person elected in said election, and to certify such fact to the Governor of the State of Mississippi, who, upon such declaration and certificate by the Secretary of State, issues to the person elected his commission. The Secretary of State is also required to

[fol. 4] furnish to the Election Commissioners for each of the eighty-two counties of the State an official ballot, the form of which shall be followed in the printing of the ballots for the general election. For all of such services, the said Secretary of State is paid from the State Treasury and out of the funds of the State, and all necessary expenses incident thereto, including stationery, stamps, clerk hire, arranging the form of official ballot and having same printed, are likewise paid from the funds of the State of Mississippi, which are contributed by this complainant and the other taxpayers of the State of Mississippi, for all of whom this suit is filed and whose interests are directly involved and affected by said acts of said Secretary of State.

That the Defendants, the Election Commissioners of Hinds County, have general charge and supervision of general elections in so far as said County is concerned for the election of members of Congress and that in holding said elections the said Election Commissioners are required to furnish printed ballots in each precinct in said County and also to furnish all necessary stationery, pens and ink and to provide voting booths and placards of instructions to voters and also are required to select or choose the managers, clerks and bailiffs for each precinct in said County and to designate one of said managers to carry the ballot boxes, printed ballots, poll books and other supplies from the Courthouse of the County to the voting precinct and re-[fol. 5] turn same after the election to the Courthouse, and are also required, after such general election to tabulate the returns and certify same to the Secretary of State. That there are more than twenty voting precincts in said County and at each of said voting precincts the services of three managers, two clerks and a bailiff are required, all of whom receive compensation on a per diem basis as fixed by statute at the rate of $1.00 per day and in addition thereto, the person who carries the official ballot boxes, poll books and other necessities is allowed $1.00 for his service, so that on each day that an election is held in said County there is required to be paid to managers, bailiffs and clerks more than $140.00 in addition to the expenses of providing voting booths, printed ballots, stationery, pens, ink, placards of instructions, tally sheets, et cetera. That in addition to the foregoing expenses said Election Commissioners are re-

quired to meet prior to said elections and revise the poll books of the County and are required to meet after the election for the purpose of tabulating returns and for their services are also allowed a per diem compensation and complainant shows that the expenses of holding both primary and general elections in said County amount to more than $500.00 for each election, and that there are eighty-two counties in the State of Mississippi and that the same expenses are incurred and paid in each County of said State for each election.

[fol. 6] That under the law the expenses of primary elections of parties who poll as much as one-third of the total vote cast at the preceding Presidential election are payable out of the general funds of each County and Complainant shows that the Democratic Party in the State of Mississippi polled the requisite number of votes at the last Presidential election and that the expenses of its primary are therefore payable, under the laws of the State of Mississippi from the general funds of the Counties and that the expenses of such primary in Hinds County are payable from the general funds of that County and will amount in the aggregate in the sum above mentioned and that the total expenses of a primary and general election in the State of Mississippi to all the Counties thereof will amount to the sum of $40,000.00 or $50,000.00 for each election.

The Defendant-, Election Commissioners are also required in general elections to print the name of the nominees of the various political parties upon the ballots and also to print thereon the name of any person who has been requested by written petition, signed by fifty qualified electors, to become a candidate for representative in the House of Representatives of the United States when said petition has been presented to said Commissioners or the member thereof designated for that purpose, not less than fifteen days before said election.

That the Defendant, Clerk of the Board of Supervisors [fol. 7] and Auditor of said County is required to issue warrants payable out of the general funds of said County to cover the expenses of said election and the expenses of said election are paid out of the general funds of the County on warrants issued by the said defendant.

Complainant shows further that the same expenses enumerated above as being incurred by the Election Com-

missioners in a general election are also incurred in a primary election, likewise payable out of said general funds, the only difference being that in a primary election the said appointment- are made and the said expenses incurred by the County Executive Committee of the political party holding the election.

The Complainant shows further that prior to the census of 1930, the State of Mississippi under the laws of the United States was entitled to eight representatives in the House of Representatives of the Congress of the United States and that the said State was divided into eight districts from each of which districts one member of Congress was elected. That after the census of 1930, under the laws of the United States, the said State of Mississippi became and was entitled to only seven representatives in the House of Congress.

That under the laws of the United States, when the number of representatives to which a State is entitled is reduced, it is required that said representatives be elected [fol. 8] from the State at large until and unless the Legislature of said State passes a valid law redistricting said State and dividing same into districts in accordance with the Constitution of the United States and the Act of Congress of August 8th, 1911, Section 3.

Complainant shows that the Legislature of the State of Mississippi at its regular 1932 Session passed what was alleged and professing to be a law redistricting the State of Mississippi and undertaking to divide same into seven districts for the election of members of the House of Representatives. The said redistricting act is known as House Bill 197 of the 1932 Act of the Legislature of the State of Mississippi, and a copy of said bill is herewith filed, marked Exhibit "A" and as such asked to be taken and considered as a part of this bill of complaint, the same as if fully copied herein.

Complainant charges that the only valid and legal law redistricting the State of Mississippi, that could be enacted by said Legislature was and is a law that it is in accordance with the Constitution and laws of the United States and that any act or purported act attempting to redistrict the State in any other manner than in conformity with the Constitution and Laws of the United States is null and void. That Article 1, Section 4, of the Constitution of the United States provides as follows:

"The times, places, and manner of holding elections for Senators and Representatives shall be prescribed in each [fol. 9] state by the Legislature thereof; but Congress may at any time by law make or alter such regulations, except as to the place of choosing senators."

That pursuant to the authority given by the above section of the Constitution of the United States, the Congress of the United States, on August 8th, 1911 by Section 3 (Election by Districts) of the Act of that date provided as follows:

"That in each state entitled under this apportionment to more than one representative, the representatives to the sixty-third and each subsequent congress shall be elected by districts composed of a contiguous and compact territory and containing as nearly as practicable an equal number of inhabitants; the said districts shall be equal to the number of representatives to which the State may be entitled in Congress, no district electing more than one representative."

Complainant charges that when Congress passed the act above quoted, in pursuance to the authority given them by the Constitution of the United States, such act became, was, and is the sole and only law with reference to the redistricting of states for the election of congressmen, and any act or purported act attempting to redistrict the state into congressional districts for the election of congressmen [fol. 10] which does not redistrict the state in conformity with said Act of Congress is void and no legal election can be held thereunder; and complainant charges further that when the number of congressmen to which a state is entitled is decreased and no valid law redistricting said state is passed, as is the case here, it becomes and is necessary under that law that representatives in the house of Congress be elected from the state at large.

In order to show the method in which said House Bill #197 professes to redistrict the State of Mississippi, there is attached hereto as Exhibit "B" a map of said State, showing and designating the districts as professed to be established by said Act, said districts marked 1, 2, 3, 4, 5, 6 and 7; and there is also attached hereto as Exhibit "C" a

certified copy of the census report for the State of Mississippi, showing the whole population of the State of Mississippi by counties, and also by districts as professed to be established by said purported bill.

Complainant further shows that under the said attempted apportionment by the Legislature of the State of Mississippi, the population of the districts attempted to be established by them are as follows, to-wit:

First District, 241,605.
Second District, 219,661.
Third District, 402,969.
Fourth District, 184,266.
Fifth District, 244,562.
Sixth District, 284,457.
Seventh District, 414,301.

[fol. 11] Complainant further charges that the State of Mississippi is an agricultural state, and that the entire state is comparatively level; that it has no natural obstructions or barriers, such as navigable streams or mountains, and that said state is easily susceptible to a division into seven continguous and compact districts, and there is no reason why a division of the state into seven contiguous and compact districts of a practically equal number of inhabitants could or should not be made.

Complainant charges that the Legislature of the State of Mississippi used no discretion or judgment in undertaking to redistrict the said state, but arbitrarily failed and neglected to redistrict said state in conformity with law, but simply combined the old seventh and eighth congressional districts, making one district of them, and left the other six districts practically as they were prior to the census of 1930.

Complainant shows and charges that as shown by the map exhibited herewith and which is a true and correct map of the State of Mississippi and the districts attempted to be established by said purported bill, the Legislature of the State of Mississippi utterly failed to divide the State of Mississippi into districts which are contiguous and compact, and which kind of division could have, as above stated, been easily and reasonably made by taking one or more counties [fol. 12] from one district and making them a part of another district, all of which is apparent on the face of the map hereto attached.

To illustrate the glaring injustice and inequality, as between the seventh district, with a population according to the recent census of 414,301, embracing fifteen counties, with the fourth district with a population of 184,266 with ten counties, gives to the fourth district more than twice the strength of the seventh district in all matters of legislation and representation in congress, including the power to tax, and disfranchises or leaves without representation 230,074 of the inhabitants of the Seventh Congressional District.

Comparing the Third District with the Second District, in the Third District, with a population of 402,969, embracing eleven counties, and the Second District, with a population of 219,661, embracing ten counties, we find 183,308 persons not represented and disfranchised. And so on through the various districts showing that the Legislature exercised no reason or discretion in laying out the districts.

The proper ratio between the seven districts under the census is 287,117. Now, the Seventh District, with a population of 414,301 has 127,184 more than its ratio. The Third District, with its population of 402,969, has 115,852 [fol. 13] more than its ratio. The First District, with a population of 241,605, has 45,512 less than its ratio. The Second District with a population of 219,661, has 67,456 less than its ratio. The Fourth District, with a population of 184,226 has 102,891 less than its ratio. The Fifth District with a population of 244,562, has 42,555 less than its ratio. The Sixth District, with a population of 284,457, has 2,660 less than its ratio. And there were and are no topographical features or conditions, or any other reason that could have produced such an unethical discrimination in the state of favoritism in certain districts.

First. The said Act, is in violation of the Constitution of the United States, and of the Act of Congress above quoted, requiring congressional districts to be contiguous, compact and as nearly as possible of equal population.

Second. The said Act is in violation of the Fourteenth Amendment of the Constitution of the United States, in that it abridges the privileges and immunities of this Complainant and all other citizens of the United States who are

also citizens of the State of Mississippi, and it denies to this complainant and other citizens of the United States resident in Mississippi the equal protection of the laws, and deprives this Complainant of property without due process of law.

Third. It violates the fundamental principles upon which the government of the State of Mississippi and of the United States is founded, to-wit: the right of equal repre- [fol. 14] sentation in the halls of congress.

Complainant would further show and charge that notwithstanding that there is no legal districting of the State of Mississippi for the election of congressmen, candidates from the districts under the proposed an illegal bill are filing their applications and paying their filing fees to get their names on the ticket to be voted upon in the August primary from the various districts outlined in said illegal bill, and in that way attempting to establish districts by holding primaries and elections under said void and illegal bill, in violation of the Constitution and Laws of the United States.

Complainant would further show that the date of the congressional primary is the fourth Tuesday in August, 1932, as fixed by law; and the general election for the election of congressmen is fixed for the first Tuesday after the first Monday in November, 1932.

Complainant would further show and charge that the above named officers are now preparing to hold a primary election in the State of Mississippi for the election of representatives in Congress under said illegal and unconstitutional bill, and that they are preparing for said election and for the expenditure of public money as above set out in the conduct of said primary elections and general elections for representatives in Congress, as above set out and that [fol. 15] said officers will hold said elections in violation of the Constitution of the United States and the Laws of the United States, unless they are enjoined, prevented and restrained by the decree of this Court; and that this Complainant's rights, privileges and immunities, acting for and in behalf of himself and all the citizens, electors and taxpayers, will be effected and disregarded and violated, un-

less said Defendants are enjoined and restrained from so doing by decree of this Court.

Complainant would further show that the said officers are attempting to hold the primary election and general election in violation of the law, the result of which would be null and void, and not only will they expend money and hold a null and void election under a void statute, thereby wasting complainant's money and public funds, but under the law it will be necessary to hold another election before legal representatives in Congress can be elected, at the expense of the public and the expense of the taxpayers of Mississippi, including your Complainant, so that before representatives in the House of Congress are legally elected in the State of Mississippi, it will be necessary to hold three elections instead of one primary and one general election.

Complainant would further show that on account of the Legislature failing and neglecting to pass a legal redistricting bill there is a great confusion and anxiety among the [fol. 16] people throughout the State, and that many suits will be filed in order to ascertain what law is applicable to apply to the confused condition brought about by the attempted legislative act of trying to elect by districts instead of the alternative method of electing from the state at large, and a muliplicity of suits can and will be avoided by this procedure, and the matter is so urgent and of such paramount public importance, and with no legal and speedy remedy at law, only a court of equity can take jurisdiction and settle the controversies.

Complainant charges that there is no law now in existence by which congressmen from Mississippi can be elected by districts, and the only law on the subject provides that seven congressmen shall be elected from the state at large, and the only valid primary and election that can be held by the defendants is a state-wide primary and a state-wide election, until and unless the Legislature reconvenes and enacts a redistricting law as provided by the Constitution of the United States and the Act of Congress.

Complainant charges further that by virtue of the Acts of Congress referred to, they claim the privilege and right to be represented in the Congress of the United States by seven representatives, duly elected by the electors of the

State from seven congressional districts duly established by the Legislature of the State of Mississippi, in accordance with and as provided by law and the Constitution; and [fol. 17] they further claim the right and privilege under said act of Congress last mentioned to have each of said seven congressional districts contain as nearly as practicable an equal number of inhabitants, and that said congressional districts shall be composed of contiguous and compact territory; but under the Act of the Legislature passed at its session in 1932 and the constructions being given to said Act by the Defendants, there is an attempt to establish districts in conflict with the acts of Congress, and thereby deprive Complainant of the right to election by a fair, equal and equitable reapportionment, and the validity or invalidity of the redistricting statute directly affects each citizen, elector, and taxpayer of the State of Mississippi.

Complainant charges that a Federal question is involved in this suit, in that the legislative act involved, redistricting the State of Mississippi, offends and violates Article 1, Section 4, of the Constitution of the United States and the Fourteenth Amendment of the Constitution of the United States and Section 3 of the Act of Congress approved August 8th, 1911, which is now in full force and effect; and this Bill of Complaint calls for a construction of the Constitution of the United States and the Acts of Congress as relates to the redistricting of the State of Mississippi as provided by the Acts of Congress of 1911. Under the last census, Mississippi's representation in Congress was re- [fol. 18] duced from eight to seven.

Complainant shows further that as aforesaid, he is a qualified elector of the State of Mississippi, in all respects qualified under the Laws of the State of Mississippi and of the United States to be and become a candidate for the office of representative in Congress from the State of Mississippi. That he is more than twenty-five years of age and has for more than seven years been a citizen of the United States and an inhabitant of the State of Mississippi. That he has never participated in rebellion or other crime. That all taxes legally required of him have been paid and were paid on or before February 1st, 1932; That he is duly registered and is in all other respects fully qualified as an elector of the State of Mississippi and as a candidate for election

as a member of the House of Representatives of the United States.

He shows further that there has been presented to the Defendant, the Election Commissioners of Hinds County or to the member of said Commission designated for such purpose, a written request signed by more than fifty qualified electors of Mississippi requesting this Complainant to become a candidate in the general election to be held on the first Tuesday after the first Monday in November, 1932 and that a similar petition has been presented to the defendant, Secretary of State of the State of Mississippi, both said petitions having been presented more than fifteen days [fol. 19] prior to said election with the request that this complainant's name be placed upon the ballot to be used in said general election as a candidate from the state at large for the office of a member of the House of Representatives of the United States from Mississippi.

Complainant charges that it was the duty of the said defendants to accept the said petitions and to place his name upon the official ballots to be used in said general election as a candidate from the state at large for such office, but that the said Defendants have declined and refused to receive or accept said petition and have declined and refused to place the name of this complainant upon the ballots as a candidate to be voted upon in said election.

Complainant charges further that to permit the public funds of the State of Mississippi and of the County of Hinds to be expended in holding a void election under the void and illegal act of the Legislature of the State of Mississippi, attempting to redistrict the State into congressional districts would be a waste of the public funds of said County and State and that nothing would be accomplished by said election and the necessary result thereof would be to have a special election called, which would necessarily incur additional expenses in the amounts hereinbefore specified, payable out of the general funds of said County and State.

Complainant shows that he has no plain, adequate and [fol. 20] speedy remedy at law; and no remedy save by this suit in equity and no remedy save in this Court, the State Courts of Miss. having held that they have no jurisdiction, either at law or in equity; That to permit the expenses of said election to be paid from said public funds would be a

waste and diversion of trust funds now in the public treasuries of Hinds County and the State of Mississippi and would result in the expenditure of said funds for an unlawful purpose.

Complainant charges that the Act of the Legislature aforesaid and the Acts of the Defendants in declining and refusing to accept his petition aforesaid, are a denial and deprivation of civil rights guaranteed to him by the Constitution and Laws of the United States and is also a denial and deprivation of the civil rights guaranteed to the inhabitants and electors of the State of Mississippi, and that unless this Court intervenes, the said Defendants will continue to deny to this Complainant and deprive him of the civil rights guaranteed to him by the Constitution and Laws of the United States and will likewise deprive the other qualified electors and inhabitants of the State of Mississippi, and especially all the inhabitants of that part of the State designated by the void act of the Legislature as the new Seventh Congressional District, of the civil rights and equal protection of the law and the right of equal representation guaranteed to them by the Constitution and the Laws of the United States.

[fol. 21] That to permit the defendants to deny to the thousands of inhabitants of said district the rights guaranteed to them by the Constitution and Laws of the United States would result in a multiplicity of lawsuits for the redress of such denial and deprivation and Complainant charges that the Court of equity has jurisdiction of this matter for the prevention of a multiplicity of lawsuits, and also has jurisdiction to prevent the unlawful expenditure of public funds under the guise of a statute that denies and deprives this complainant and other taxpayers and electors of Mississippi of the rights guaranteed to them by the Constitution and Laws of the United States and that this Court has jurisdiction to protect the privileges, immunities and rights guaranteed to this complainant and other citizens of the United States and the State of Mississippi by the said Constitution and Laws.

Wherefore, Complainant prays that summons may issue for the defendants, commanding them to appear and plead, answer or move to dismiss herein, answer under oath being waived, and the said Complainant prays that a preliminary injunction herein against the defendants may issue, enjoin-

ing and restraining them from expending any of the public funds of the State of Mississippi or the County of Hinds in or about an election held or attempted to be held in conformity with the Act of the Legislature of the State of Mississippi above mentioned, and may the Defendants, Walker [fols. 22 & 23] Wood and the Election Commissioners of the County aforesaid be enjoined and required to accept and receive the petition of this Complainant and may they be required to place his name on the official ballots to be used in the general election for the election of congressmen in November, 1932, as a candidate for a member of the House of Representatives of the United States, from the State at large; And he prays that upon final hearing said preliminary injunction may be made perpetual and he prays further that said redistricting statute of the Legislature of the State of Mississippi of 1932 may be declared violative of the Constitution and Laws of the United States and therefore invalid.

If the Complainant has prayed for wrong, improper or insufficient relief, then, pray grant him such other relief, either general or special, as the nature of the case may entitle him to receive and as in duty bound he will ever pray.

Stewart C. Broom, Complainant, by H. V. Wall, J. H. Price, J. O. S. Sanders, Chalmers Potter, P. C. Canizaro, R. L. Jones, W. S. Henley, Solicitors.

Duly sworn to by Stewart C. Broom. Jurat omitted in printing.

[fol. 24] EXHIBIT "A" TO BILL OF COMPLAINT

STATE OF MISSISSIPPI:

Office of Secretary of State, Jackson

I, Walker Wood, Secretary of State of the State of Mississippi, do hereby certify that the within and attached is a true and correct copy of House Bill No. 197, Act of the Mississippi Legislature, 1932, the enrolled act of which is now a matter of record in this office.

Given under my hand and the Great Seal of the State of Mississippi this the 22nd day of July, 1932.

Walker Wood, Secretary of State. (Seal.)

House Bill No. 197

An Act to Apportion and Redistrict the State of Mississippi Into Seven Congressional Districts and to Provide for the Election of a Congressman from Each District and to Repeal Section 6276 of the Code of 1930

Section 1. Be it enacted by the Legislature of the State of Mississippi, That the said State be, and is hereby divided into seven Congressional districts as follows:

First District: The First Congressional District shall be [fol. 25] composed of the following counties: Alcorn, Prentiss, Tishomingo, Lee, Itawamba, Monroe, Clay, Oktibbeha, Lowndes, and Noxubee.

Second District: The Second Congressional District shall be composed of the following counties: DeSoto, Marshall, Benton, Tippah, Tate, Panola, Lafayette, Union, Tallahatchie and Yalobusha.

Third District: The Third Congressional District shall be composed of the following counties: Tunica, Quitman, Coahoma, Bolivar, Washington, Sunflower, Leflore, Holmes, Humphreys, Sharkey, and Issaquena.

Fourth District: The Fourth Congressional District shall be composed of the following counties: Grenada, Chickasaw, Calhoun, Carroll, Montgomery, Webster, Choctaw, Attala, Winston, and Pontotoc.

Fifth District: The Fifth Congressional District shall be composed of the following counties: Kemper, Scott, Newton, Lauderdale, Simpson, Smith, Jasper, Clarke, Leake, and Neshoba.

Sixth District: The Sixth Congressional District shall be composed of the counties of Lawrence, Jefferson Davis, Covington, Jones, Marion, Lamar, Forrest, Perry, Greene, Pearl River, Stone, George, Hancock, Harrison, Jackson, and Wayne.

Seventh District: The Seventh Congressional District shall be composed of the following counties: Claiborne, Copiah, Jefferson, Walthall, Adams, Franklin, Lincoln, [fol. 26] Wilkinson, Amite, Pike, Rankin, Hinds, Warren, Yazoo and Madison.

Section 2. The present number of Congressmen in the House of Representatives shall continue to represent their

several districts until the expiration of the terms for which they are elected. At the regular election held in November, 1932, there shall be elected from each of the hereinbefore named districts one congressman.

Section 3. Should a vacancy by death, resignation or otherwise occur in any one or more of the eight present districts between the passage of this Act and the expiration of the terms of the present Representative in Congress, such vacancy shall be filled from the district in which such vacancy occurs in the way heretofore provided for by law the same as if this Act had not been passed.

Section 4. That Section 6276, Code of 1930, be and the same is hereby repealed.

Section 5. This Act shall take effect and be in force from and after its passage.

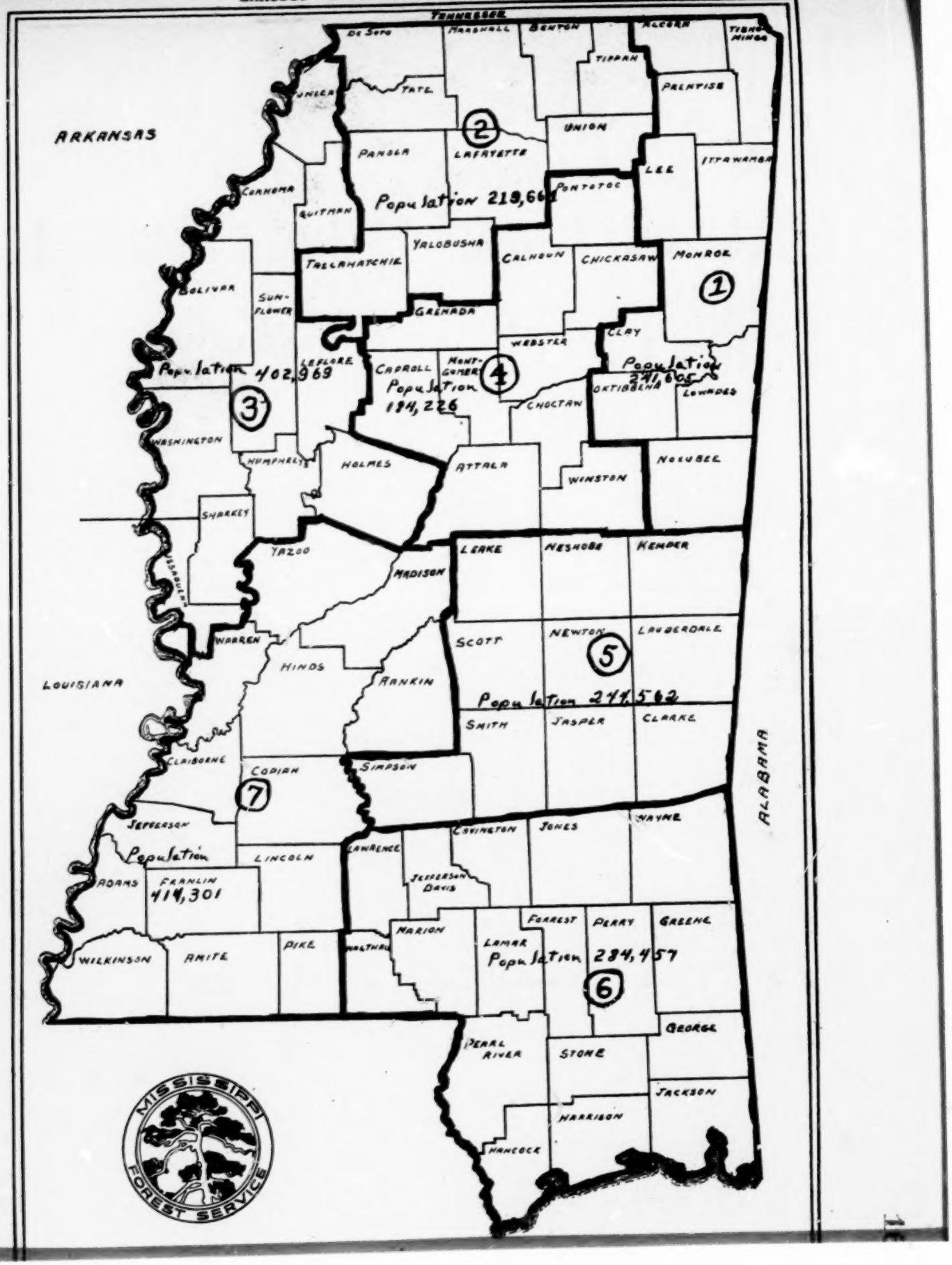
This bill having been allowed to remain on my desk for the Constitutional period of five days, has become a law without my signature, as per Section 72 of the State Constitution.

May 18, 1932.

Sennett Conner, Governor.

(Here follows Exhibit "B" to bill of complaint, side folio 27)

EXHIBIT "B" TO BILL OF COMPLAINT



[fol. 28] EXHIBIT "C" TO BILL OF COMPLAINT

Population of Mississippi by Counties as Shown in Report of Secretary of State from the Census of the United States in 1930

First District

Alcorn	23,653
Clay	17,931
Itawamba	18,225
Lee	35,313
Lowndes	29,987
Monroe	36,141
Noxubee	25,560
Oktibbeha	19,119
Prentiss	19,265
Tishomingo	16,411
Total	241,605

Second District

Benton	9,813
DeSoto	25,438
Lafayette	19,978
Marshall	24,869
Panola	28,648
Tallahatchie	35,568
Tate	17,671
Tippah	18,658
Union	21,268
Yalobusha	17,750
Total	219,661

[fol. 29]

Fifth District

Clarke	19,679
Jasper	18,634
Kemper	21,881
Lauderdale	52,748
Leake	21,803
Neshoba	26,691
Newton	22,910
Scott	20,914
Simpson	20,897
Smith	18,405
Total	244,562

Seventh District

Adams	25,564
Amite	19,712
Claiborne	12,152
Copiah	31,314
Franklin	12,268
Hinds	85,118
Jefferson	14,291
Lincoln	26,357
Madison	35,796
Pike	32,201
Rankin	20,353
Walthall	13,871
Warren	35,785
Wilkinson	13,957
Yazoo	37,262
Total	414,301

Third District

Bolivar	71,051
Coahoma	46,327
Holmes	38,534
Humphreys	24,729
Issaquena	5,734
Leflore	53,506
Quitman	25,304
Sharkey	13,877
Sunflower	66,364
Tunica	21,233
Washington	54,310
Total	402,969

Fourth District

Attala	26,035
Calhoun	18,080
Carroll	19,765
Chickasaw	20,835
Choctaw	12,339
Grenada	16,802
Montgomery	15,009
Pontotoc	22,034
Webster	12,128
Winston	21,239
Total	184,226

Sixth District

Covington	15,028
Forrest	30,115
George	7,523
Green	10,644
Hancock	11,415
Harrison	44,143
Jackson	15,973
Jeff. Davis	14,281
Jones	41,492
Lamar	12,848
Lawrence	12,471
Marion	19,923
Pearl River	19,405
Perry	8,197
Stone	5,704
Wayne	15,295
Total	284,457

[fol. 30] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER FOR ORGANIZATION OF THREE JUDGE COURT—Filed July 30, 1932

This day this cause coming on to be heard before the Court upon the application of the plaintiff for a preliminary injunction, and it appearing that one of the grounds upon which the injunction is prayed for is the alleged unconstitutionality of a statute of the State of Mississippi because in violation of the Constitution of the United States, and the Court being of the opinion that no restraining order should issue without notice to all interested parties, as required by law, and it further appearing that before any injunction should be granted under the bill and prayer for relief therein contained, it is the duty of the Court to call to its assistance two other judges, one of whom shall be a Circuit Judge:

It is ordered, adjudged, and decreed that a three judge court be organized to hear said application, as required by [fol. 31] Section 266 of the Judicial Code, to be composed of one Circuit Judge and two District Judges, and to be convened in New Orleans, Louisiana, at 10 o'clock A. M., on the 5th day of August, 1932; and it is further ordered, adjudged, and decreed that the Governor and the Attorney General of the State of Mississippi, as well as all defendants herein, be notified of said hearing, as required by law.

Ordered, adjudged, and decreed this 27th day of July, A. D. 1932.

E. R. Holmes, United States District Judge.

We accept service of notice herein for plaintiff this July 30th, 1932.

May, Sanders, McLaurin & Byrd, of Counsel for Plaintiff.

Greek L. Rice, Atty. Gen., for all Defendants named in O. B. this July 30, 1932.

Greek L. Rice, Atty. Gen., by J. A. Lauderdale, Asst. Atty. Gen.

[fol. 32] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS BILL—Filed August 4, 1932

To the Honorable Rufus E. Foster, Judge of the United States Circuit Court of Appeals for the Fifth Circuit, and Honorable Edwin R. Holmes, Judge of the District Court of the United States for the Southern District of Mississippi, and convened as a special court at New Orleans, Louisiana:

Now comes Greek L. Rice, Attorney General of the State of Mississippi, in his own behalf and in behalf of all the defendants named in the original bill and moves the court to dismiss the original bill on file herein and for grounds of said motion assigns the following, to-wit:

I. There is no equity on the face of the bill.

II. A court of equity is without jurisdiction in this case.

III. Under the facts stated in the original bill, plaintiff is not entitled, under the law, to have his name placed on the ballot as a candidate from the state at large.

IV. The decree of this court would oe inefficacious.

Respectfully submitted.

Greek L. Rice, Attorney General, and J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[fol. 33] IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDMENT TO BILL OF COMPLAINT

Presented to the Court and allowed to be filed August 5, 1932.

And now comes the plaintiff, after leave of court first had and obtained, filed this his amendment to his bill of complaint by inserting in the prayer thereof, just before the prayer for general relief, the following:

"And plaintiff further prays that a temporary injunction be issued by this honorable court, restraining and preventing the defendant Secretary of State from preparing and distributing to the election commissioners of the various counties of the State of Mississippi, sample ballots for use in the general election in November 1932, listing the names of candidates for the Congress of the United States from districts as defined by said House Bill 197, and requiring him to prepare and distribute said ballots for use in such election for such office from the State-at-Large; and that upon the final hearing hereof may such temporary order be made final and perpetual."

J. H. Price, Hugh V. Wall, J. O. S. Sanders, Chalmers Potter, Solicitors for Plaintiff.

[fol. 34] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER ALLOWING AMENDMENT, ETC.—Filed August 10, 1932

This cause this day came on for hearing on motion of plaintiff for temporary injunction on Bill of Complaint, exhibits thereto and the amendment to the prayer of the Bill and all of the parties being present in Court and represented by Counsel and the defendants making a motion to dismiss the Bill of Complaint, upon the grounds set out in said motion, and the Court having heard the argument of Counsel to dismiss the Bill of Complaint, and being advised in the premises doth order that said motion be, and the same is overruled, and Counsel for all of the defendants announced in open Court that no further pleading on the part of the defendants would be filed, and upon proof the Court finds that the allegations in said bill are true.

It is therefore ordered, a majority of the Court concur-
[fol. 35] ring, that the prayer of the Bill and the amendment thereto be and the same is hereby granted, and the defendants, and each of them, are restrained and enjoined from doing and performing any and all of the acts contained in the prayer and the amendment thereto.

It is further ordered by the Court that Walker Wood, the Secretary of State for the State of Mississippi be, and he is hereby restrained and enjoined from receiving the returns and certifying the nominees for representatives in Congress from Districts in the State of Mississippi as set out and contained in House Bill 197, known as the Congressional Redistricting Act of the Legislature of the State of Mississippi, and he is restrained and enjoined from certifying the names of any persons elected represenatives in Congress from the State of Mississippi, except those who are elected from the State at large.

It is further ordered that the election commissioners named in the Bill of Complaint of Hinds County, Mississippi, be and they are hereby restrained and enjoined from receiving any sample ballots from the Secretary of State for the State of Mississippi, containing the names of candidates for representatives in Congress by Districts as set out in House Bill 197 of the Acts of Legislature of the State of Mississippi, 1932 Session, known as the Congressional Redistricting Bill for the State of Mississippi, and it is fur- [fol. 36] ther ordered that said election commissioners be and they are hereby restrained and enjoined from certifying the returns of the election of names of any persons to the Secretary of State of the State of Mississippi for representatives in Congress, except those persons who are elected from the State at large.

It is further ordered that the Secretary of State of the State of Mississippi be and he is hereby restrained and enjoined from preparing and sending out sample ballots to be used for the election for representatives in Congress from the State of Mississippi, except for an election for representatives in Congress from the State at large.

It is further ordered by the Court that the Secretary of State of the State of Mississippi be and he is hereby restrained and enjoined from certifying to the Governor of the State of Mississippi any persons elected as representatives in Congress in the State of Mississippi, except those persons elected from the State at large.

It is further ordered that House Bill 197, known as the Congressional Redistricting Bill for the State of Mississippi at its 1932 Session, be and the same is hereby declared unconstitutional and illegal, and that no valid election can

[fol. 37] be held for representatives in Congress thereunder.

It is further ordered that the Clerk of this Court shall issue said injunction and restraining order upon the plaintiff, filing a bond in the penal sum of One Thousand ($1,000.00) Dollars, to be approved by the Clerk of this Court.

Ordered, adjudged, and decreed this day, August 5, 1932.

Rufus E. Foster, Circuit Judge. Ben C. Dawkins, District Judge.

Hugh V. Wall, J. H. Price, J. O. S. Sanders, Chalmers Potter.

O. K.

J. A. Lauderdale, Attorney for Defts.

[fol. 38] In United States District Court

[Title omitted]

Answer—Filed August 12, 1932

Now come all of the defendants in the above styled cause by Greek L. Rice, Attorney General of the State of Mississippi, and J. A. Lauderdale, Assistant Attorney General, and for answer to the original bill now on file against them say:

I

Defendants admit each and every allegation of a material fact which is well pleaded in the original bill on file herein.

Defendants do not admit the statements and conclusions of law made by plaintiffs in the original bill.

II

Defendants aver as follows:

(1) That there is no equity on the face of the bill.

(2) That under the facts stated in the bill and admitted in the answer this Court is without jurisdiction in this case.

(3) That under the facts stated in the original bill and [fol. 39] admitted in the answer, plaintiff is not entitled

under the law to have his name placed on the ballot as a candidate from the State at large.

(4) The decree of this Court would be inefficacious.

(5) House Bill No. 197, Regular Session Legislature 1932, does not contravene any provision of the Federal Constitution.

III

Defendants now having answered the allegations of the original bill on file herein pray that said temporary injunction heretofore granted by this Court be dissolved, the original bill be dismissed, and the plaintiff taxes with all costs in this behalf expended.

Greek L. Rice, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[fol. 40] IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION SETTING DOWN FOR HEARING—Filed August 16, 1932

The defendants having answered the bill, admitting the facts of the bill, comes the plaintiff and sets this cause down for hearing on the bill, amendments and exhibits thereto, answer of the defendants, and the former preliminary restraining order of this court.

S. C. Broom, by H. V. Wall, Chal. Potter, J. O. S. Sanders, & J. H. Price, Attys.

[fol. 41] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

No. 407

S. C. BROOM, Complainant,

v.

WALKER WOOD, Secretary of State of the State of Mississippi, et al., Defendants

FINAL DECREE—Filed August 16, 1932

This cause this day came on for final hearing on Bill of Complaint and answer filed by all of the defendants and

by consent of all the parties, the case is set down for final hearing and it appearing to the Court composed of Circuit Judge Rufus E. Foster, and District Judges, E. R. Holmes and Ben C. Dawkins, heard the cause on August 5, 1932, on motion of the complainant, Stewart C. Broom, for a preliminary injunction herein, according to the prayer and amendment thereto of his Bill of Complaint herein; and upon defendants' motion to dismiss this suit for causes therein set out, and upon the whole case it appearing that the answer filed by the defendants admits the facts set out in the Bill of Complaint, and the Court having heard the argument of the case, considered the judgment roll herein, and being advised sufficiently:

[fol. 42] It is ordered, adjudged, and decreed, a majority of the Court concurring, that the preliminary injunction heretofore granted be and the same is hereby continued and made permanent.

It is therefore ordered, adjudged, and decreed, a majority of the Court concurring, that the prayer of the Bill and the amendment thereto be and the same is hereby granted, and the defendants, and each of them, are restrained and enjoined from doing and performing any and all of the acts contained in the prayer and the amendment thereto.

It is further ordered, adjudged, and decreed by the Court that Walker Wood, the Secretary of State for the State of Mississippi be, and he is hereby restrained and enjoined from receiving the returns and certifying the nominees for representatives in Congress from Districts in the State of Mississippi as set out and contained in House Bill 197, known as the Congressional Redistricting Act of the Legislature of the State of Mississippi, and he is restrained and enjoined from certifying the names of any persons elected representatives in Congress from the State of Mississippi, except those who are elected from the State at Large.

It is further ordered, adjudged, and decreed that the election commissioners named in the Bill of Complaint of Hinds County, Mississippi, be and they are hereby re-

[fol. 43] strained and enjoined from receiving any sample ballots from the Secretary of State for the State of Mississippi, containing the names of candidates for representatives in Congress by Districts as set out in House Bill

197 of the Acts of Legislature of the State of Mississippi, 1932 Session, known as the Congressional Redistricting Bill for the State of Mississippi, and it is further ordered that said election commissioners be and they are hereby restrained and enjoined from certifying the returns of the election of names of any persons to the Secretary of State of Mississippi for representatives in Congress, except those persons who are elected from the State at large.

It is further ordered, adjudged, and decreed that the Secretary of State of the State of Mississippi be and he is hereby restrained and enjoined from preparing and sending out sample ballots to be used for the election for representatives in Congress from the State of Mississippi, except for an election for representatives in Congress from the State at large.

It is further ordered, adjudged, and decreed that the Secretary of State of the State of Mississippi be and he is hereby restrained and enjoined from certifying to the Governor of the State of Mississippi any persons elected as representatives in Congress in the State of Mississippi, except those persons elected from the State at large.

[fol. 44] It is further ordered, adjudged, and decreed that House Bill 197, known as the Congressional Redistricting Bill for the State of Mississippi at its 1932 Session, be and the same is hereby declared unconstitutional and illegal, and that no valid election can be held for representatives in Congress thereunder.

It is ordered, adjudged, and decreed by the Court that the preliminary injunction hereinbefore granted, be and it is now made perpetual, but that no costs be adjudged against the defendants.

Ordered and adjudged this the 16th day of August, 1932.

Rufus E. Foster, U. S. Circuit Judge. Ben C. Dawkins, U. S. District Judge.

Endorsed thereon:

August 18th, 1932.

Service of the writ of injunction granted by the within decree is hereby waived for all of the defendants named in said suit.

J. A. Lauderdale, Attorney for All of the Defts.

[fol. 45] IN UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION

In Equity. No. 407

STEWART C. BROOM, Complainant,

v.

WALKER WOOD, Secretary of State, et al., Defendants

Before Foster, Circuit Judge, and Holmes and Dawkins, District Judges

OPINION—Filed September 1, 1932

FOSTER, Circuit Judge:

This is a bill brought by Stewart C. Broom, a citizen of the United States, domiciled in Mississippi, against various state officers, praying for interlocutory and final injunctions to prohibit them from acting under the provisions of House Bill No. 197 of the 1932 Acts of the Legislature of Mississippi, known as the Congressional Redistricting Act, on the ground that it violates the provisions of Art. 1, Sec. 4 of the Constitution of the United States and Sec. 3 of the Act of Congress of August 8, 1911 (Title 2 U. S. C. A. Sec. 3). The defendants, appearing through the Attorney General of Mississippi, admitted all the allegations of fact in the bill but objected to the jurisdiction of the court on the grounds that sufficient jurisdictional amount [fol. 46] was not involved and that the cause was not cognizable in equity as no rights of property were invaded. The plea to the jurisdiction was overruled and an interlocutory injunction issued on bond. On final hearing the injunction was made permanent.

Statement of Facts

The undisputed material facts are these. Based on the census enumeration of 1910, Mississippi was allotted eight representatives in Congress. Under the provisions of Sec. 22, Act of June 18, 1929, 46 Stat. 26, the allotment was reduced to seven.

The act of the Mississippi Legislature complained of, House Bill No. 197, Regular Session, 1932, divides the state

of Mississippi into seven congressional districts. The number of inhabitants in each district is approximately as follows. The first district, 241,000; second district, 219,000; third district, 420,000; fourth district, 184,000; fifth district, 244,000; sixth district, 284,000; seventh district, 414,000.

According to the 1930 census, Mississippi has 2,009,821 inhabitants. It would be practicable to divide the state into seven districts having compact and contiguous territory with each district having approximately the same number of inhabitants.

Conclusions of Law

The right to vote for a Representative in Congress is [fol. 47] a right guaranteed by the Constitution of the United States. U. S. vs. Mosley, 238 U. S. 383. Said right to vote implies the right to vote in a legal election. Sec. 3 of the Act of August 8, 1911, requires each state to be divided into the number of districts equal to the number of representatives to which the state may be entitled, said districts to be composed of contiguous and compact territory, and to have as nearly as practicable the same number of inhabitants. The act is mandatory and must be followed by the states in fixing Congressional districts. The Mississippi act is clearly violative of the said act of Congress and illegal and void. Any election for representatives based upon the redistricting of the state under the provisions of said act will therefore be illegal and deprive the voters of the state of a right guaranteed by the Constitution. The plaintiff has no remedy at law at all. An injunction is the proper remedy in the premises.

Under the provisions of Sec. 24, subdiv. 14, Judicial Code, (28 U. S. C. A. 41) the District Court has jurisdiction in equity, regardless of the amount involved or the violation of any right of property, to prevent invasion of any right of a citizen guaranteed by the Constitution.

[fol. 48] In United States District Court for the Jackson Division of the Southern District of Mississippi

No. 407

S. C. Broom, Complainant,

v.

Walker Wood, Secretary of State, of the State of Mississippi, et al., Defendants

Before a Specially Constituted Court, under Section 266 of the Judicial Code as Amended, U. S. C. A., Title 28, Section 380, Composed of Foster, Circuit Judge, and Holmes and Dawkins, District Judges

Dissenting Opinion by Judge Holmes—Filed August 24, 1932

The final decree in this case is broad in terms and far-reaching in effect. It expressly declares void an entire act of the Legislature and perpetually enjoins the Governor, as well as all subordinate officers, from executing its provisions. It indirectly strikes at nominations by political parties, although it was stated in open court that no interference with party primaries was asked by the plaintiff; but I shall not dwell upon this seemingly apparent error in the decree, as the objections to it are more deeply rooted. However, see Section 5870 and 5900 Miss. Code of 1930; Newberry vs. United States, 256 U. S. 232.

It was conceded at the hearing, and the court judicially [fol. 49] knows, that the elections sought to be regulated are regular ones provided by law to choose officers, both state and federal, in addition to representatives in Congress, and that the expense of adding the names of congressional candidates to the ballot is too trifling for this or any court to consider. It was further conceded at the bar that the right of the plaintiff to be a candidate for office was not a sufficient legal basis for the issuance of an injunction.

Reliance for jurisdiction in this court is had solely upon Sec. 24, Par. 14, of the Judicial Code. Regardless of the amount in controversy, this paragraph gives the court jurisdiction of "all suits at law or in equity authorized by law to be brought by any person to redress the deprivation,

under color of any law, * * * of any right, privilege, or immunity secured by the Constitution of the United States, or of any right secured by any law of the United States providing for equal rights of citizens of the United States, or of all persons within the jurisdiction of the United States."

It is not conceivable that Congress intended by this paragraph to change the well settled rule that a court of equity is concerned only with matters of property and the maintenance of civil rights. The grant of jurisdiction of "suits at law or in equity authorized by law to be brought" signifies an intention to preserve, and not to obliterate, the his- [fol. 50] torical distinctions between law and equity embedded in the federal constitution, and recognized in federal jurisprudence from the national government's birth to the present time. This court has no jurisdiction in matters of a political nature, except when necessary to the protection of rights of property. "Neither the legislative nor executive department," said Chief Justice Chase, "can be restrained in its action by the judicial department, though the acts of both, when performed, are, in proper cases, subject to its cognizance." Mississippi v. Johnson, 4 Wall 475. "The office and jurisdiction of a court of equity," said Mr. Justice Gray, "unless enlarged by express statute, are limited to the protection of rights of property." In re Sawyer, 124 U. S. 200. Mr. Chief Justice Fuller, on circuit, quoting the preceding excerpts and citing other cases, added: "To assume jurisdiction to control the exercise of political powers, or to protect the purely political rights of individuals, would be to invade the domain of the other departments of government or of the courts of common law." Green v. Mills, 69 Fed. 852. See, also, Giles v. Harris, 189 U. S. 475, 47 L. ed. 909; Brumfield v. Brock, 142 So. 745; Pomeroy's Equity Jurisprudence, Vol. 4, (14 ed.) Sec. 1753.

Questions of equitable jurisdiction and procedure aside, the claim in this case is lacking in matter of substantial federal right. The crux of plaintiff's contention is that the [fol. 51] right to vote implies the right to vote in a legal election where his ballot will count for as much, relatively, as the ballot of any other elector, and that Mississippi's recent redistricting act, by inequality in number of inhabitants, lessens the weight of his vote in comparison with the

vote of electors in other congressional districts with fewer inhabitants. No denial of the right to vote or hold office is asserted. No property or civil right is denied or threatened. The federal implied right, which is asserted, is that the vote of every person in the seventh district shall be of equal weight or power with the vote of every elector in other districts.

With deference, it is thought that the conclusion of the court is predicated upon a false major premise. The equal protection clause of the fourteenth amendment is inapplicable. No statutory or constitutional provision gives any elector the right to vote in a district numerically equal in inhabitants to every other congressional district. Mathematical equality is not required. Numerically exact limits are not fixed, either in the constitution or by act of Congress. The widest discretion has been exercised by the legislatures, under the present and previous apportionments, without congressional interference. Under the one of 1930, there are many states with unequal districts, as to the number of inhabitants. The State of Alabama has one [fol. 52] with 250,000 inhabitants, and another with 450,000; California one with 165,000 and another with 350,000; Michigan one with 225,000 and another with 400,000; Ohio one with 168,281, another with 633,678; Pennsylvania one with 125,322, another with 445,109; South Dakota one with 200,000, another with 650,000; Tennessee one with 195,000, another with 380,000. If, as plaintiff claims, he has a federal right to a balancing vote throughout the United States, it is apparent that this Court can grant him no effective relief. For this reason, the Constitution gave plenary powers to regulate the subject to the Legislature of each state and to the Congress.

There is also a wide gulf between the facts alleged and the right asserted. The bill relies upon the number of inhabitants in each district; nothing is said about the number of qualified electors. This is natural because the basis of representation in the Congress is apportioned by the Constitution in accordance with the number of inhabitants in each state. It is well known that in many of the States, including this one, residence is not the sole qualification of an elector. The proportion of electors to inhabitants is a factual relation, depending upon varying conditions, of which a court cannot take judicial knowledge. Notwith-

standing the excessive number of inhabitants, the plaintiff's vote, under his theory, may outweigh the vote of [fol. 53] electors in other districts with fewer inhabitants. It is a non-sequitur, to conclude that the number of qualified electors in each district is in equal proportion to the number of inhabitants. If then the asserted right existed in the abstract, no facts are shown which would give play to the exercise of it.

The objections to the decree are still more serious. To issue an injunction to restrain the holding of an election, or directing the mode in which it should be held, has ever been regarded by constitutional writers as an interference with a free expression of opinion, and an unwarranted obstruction to the freedom of elections, which, if successful, would be fraught with danger to our republican institutions. The mere effort to assume such a power is suggestive of a tendency to render the people and the officers subservient to the courts, in matters of civil polity and endangers our dual form of state and national government, each with its separate and independent departments.

The relief asked should be denied, not that the redistricting act is deemed wise, or that all of the regulations prescribed by Congress have been fairly met, but because, under the distribution of powers in the federal constitution, the judicial department is not the guardian of the rights of the people in respect to the times, places and manner of holding elections for Representatives in the Congress. The Constitution says these things "shall be prescribed in [fol. 54] each state by the Legislature thereof; but the Congress may at any time by law make or alter such regulations, except as to the places of choosing senators." If a primary object of the act is evinced by the mandate that "the Representatives to Congress shall be elected by districts composed of contiguous and compact territory," each with only one representative, such object should not be wholly defeated because the Legislature may have abused its discretion with reference to a standard which is plainly directory, as shown by the use of the words, "as nearly as practicable." The discretion was not given to the judiciary. A court can only efface the districts, but Congress may alter the boundaries, or regulate more in detail the number of inhabitants, if not retroactively, at least prospectively.

The rule is well settled that, except where the Constitution has imposed limits upon the legislative power, it must be considered as practically absolute. Judge Cooley says:

"The protection against unwise or oppressive legislation, within constitutional bounds, is by an appeal to the justice and patriotism of the representatives of the people. If this fails, the people in their sovereign capacity can correct the evil; but courts cannot assume their rights. The judiciary can only arrest the execution of a statute when it conflicts with the Constitution. It cannot run a race of opinion upon points of right, reason and expediency with the law-making power. Any legislative act which does not [fol. 55] encroach upon the power apportioned to the other departments, being prima facie valid, must be enforced, unless restrictions upon the legislative authority can be pointed out in the Constitution, and the case shown to come within them."

If it be contended that, as a citizen or an elector of the State, the plaintiff has a federal right to insist upon a compliance by the Legislature with the Congressional reapportionment act, it becomes readily apparent that in either capacity he has sustained no injury which has not been suffered by the people or the electorate at large. If any wrong has been done by the Legislature, it is a public, political wrong, from which no special injury has resulted, or is impendent to the plaintiff, and for which equity will grant no injunctive relief.

In conclusion, I am constrained to dissent, because I regard the issuance of the injunction in this case as an encroachment by the court upon the legislative power of a state, the necessary effect of which is to substitute the judgment of the court for that of the Legislature, in a matter where the Federal constitution has granted an exclusive discretion, primarily to the legislature of each state and ultimately to the Congress of the United States. Operating in this instance directly upon the primary function of the Legislature, if successful, the injunction portends the possibility of a like encroachment upon the ultimate, or a similar, function granted to the Congress by the Constitution of the United States.

[fol. 56] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL WITH SUPERSEDEAS—Filed September 1, 1932

To the Honorable Benjamin N. Cardozo, Justice of the Supreme Court of the United States:

Now come all of the defendants in the above styled and numbered cause, by their attorney Greek L. Rice, Attorney General, and J. A. Lauderdale, Assistant Attorney General, and conceiving themselves aggrieved by the decree made and entered by a special statutory court in the above styled cause on the 16th day of August, 1932, wherein among other things said Court, composed of Honorable Rufus E. Foster, Circuit Judge, Honorable Ben C. Dawkins, District Judge, and Honorable E. R. Holmes, District Judge, under Section 266 of the United States Judicial Code, Section 38, Title 28, United States Code Annotated, granted the plaintiff's application for an injunction in said cause, do hereby petition [fol. 57] your honor for an appeal to the Supreme Court of the United States from said final decree, and especially that decree granting the plaintiff's application for a permanent injunction, all of which reasons are now set forth in the assignment of errors which is filed herewith.

Petitioners further show unto your Honor that said permanent injunction, if permitted to stand, will seriously interfere with and cause irreparable damages and injury to your petitioners, the State of Mississippi, its officers, agents and citizens; that said injunction prohibits the officers and agents of the State of Mississippi from holding an election for members of Congress according to the Reapportionment Act as made by the Legislature of the State of Mississippi in House Bill No. 197, Acts of the Legislature of 1932.

In view of the fact that petitioners and others will sustain irreparable harm, damages and injury by reason of said Court granting plaintiff's application for said permanent injunction in said cause, these petitioners pray that their petition for an appeal may be allowed with supersedeas until the final determination of said cause in the Supreme Court of the United States.

Petitioners further pray that the transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court [fol. 58] of the United States at Washington, D. C.

Petitioners hereby made exhibits to this petition and ask to be taken as a part hereof as if fully set out herein, the following papers, to wit:

Exhibit "A". The original bill filed by plaintiff.

Exhibit "B". Motion to dismiss the original bill filed by petitioners.

Exhibit "C". The decree of the Court granting a preliminary injunction.

Exhibit "D". Answer of petitioners and motion to dissolve the preliminary injunction.

Exhibit "E". Decree of the Court granting a permanent injunction.

Exhibit "F". Certified copy of House Bill No. 197, Acts of the Legislature, 1932.

Petitioners would further show that under the provisions of Section 5870, Code of 1930, the party primaries to nominate candidates for Congress are required to be held on the fourth Tuesday in August, 1932, and the second primary, if any, three weeks thereafter, and that under the laws of the United States the regular election to elect members of Congress is required to be held on Tuesday after the first Monday in November; that it would be impossible to get a decision of the Supreme Court of the United States on the questions involved within time to hold the primaries and the general election after such decision; that on account of said injunction irreparable loss and injury will be sus- [fol. 59] tained by the parties in nominating their candidates and by the people in electing candidates for Congress, and it is therefore necessary that said appeal be granted with supersedeas in order that the primaries and election may be held in accordance with law and at the time fixed by law.

Petitioners would further show unto your honor that the above styled cause is a suit against the State of Mississippi, its officers, agents and employees, and that, therefore, under the law no bond is required for an appeal with supersedeas by the State from said final decree. However, petitioners would show that if your Honor deems it advisable or ex-

pedient that security be furnished before said appeal with supersedeas is granted, then said petitioners will willingly comply with said order of the Court by depositing cash security with the Clerk of the Supreme Court of the United States or the Clerk of the District Court of the United States for the Southern District of Mississippi, or by filing a bond as required by law.

Respectfully submitted this the 18th day of August, 1932.

Greek L. Rice, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorneys for Petitioners.

(The exhibits to foregoing petition are here omitted, having all been heretofore copied.)

[fol. 60] In Supreme Court of the United States, Chambers of Cardozo, J.

S. C. Broom, Plaintiff,

v.

Walker Wood, as Secretary of State, et al., Defendants

Application for Supersedeas

Order Denying Application for Supersedeas—Filed September 7, 1932

Whether a court of equity may properly grant an injunction upon the facts exhibited in the bill of complaint is a difficult question as to which I do not intimate any opinion in denying this application.

To suspend the injunction pending the appeal would be equivalent, or nearly so, to a reversal of the final decree of the three-judge court, for the date appointed for the general election will in all probability have gone by before the appeal can be decided.

Such a nullification of the decree by the order of a single justice is an exercise of power so extraordinary as to be justified only by a showing of extraordinary hardship.

I am satisfied that the federal statute (U. S. Code, Title 2, Sec. 8) and the statute of Mississippi (Mississippi Code,

Sec. 6380) governing special elections to fill vacancies which have not been filled at the regularly appointed time, supply the machinery whereby the interests of the public will be adequately protected in the event that the decree for an injunction shall hereafter be reversed.

The application for a supersedeas will therefore be denied.

Dated, Sept. 3, 1932.

Benjamin N. Cardozo, Associate Justice of the United States Supreme Court.

[fol. 61] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed September 7, 1932

To the Honorable Rufus E. Foster, Circuit Judge; Ben C. Dawkins and E. R. Holmes, District Judges, composing said Court:

Now come Walker Wood, Secretary of State, Sennett Conner, Governor, Greek L. Rice, Attorney General, the Election Commissioners of Hinds County, and all of the defendants in the above styled and numbered cause, and conceiving themselves aggrieved by the order made and entered by the above named Court in the above entitled cause on the 16th day of August, 1932, wherein among other things said Court, composed of Judge Rufus E. Foster, Circuit Judge, Judge Ben C. Dawkins and Judge E. R. Holmes, District Judges, under Section 266 of the United States Judicial Code and Section 380, Title 28, United States Code Annotated, granted the plaintiff's application for a permanent injunction in said cause, do hereby petition for an appeal to the Supreme Court of [fol. 62] the United States from said final order and decree, and especially that portion of said decree granting the plaintiff's application for a permanent injunction, all of which reasons are set forth in the assignments of error which is filed herewith.

Defendants further show unto the Court that the above entitled cause is a suit against the State of Mississippi and

its officers, agents and employees and that, therefore, under the law no bond is required for the appeal by the defendants from said final order and decree. In view of the fact that defendants will suffer irreparable harm and damages by reason of said Court granting plaintiff's application for said permanent injunction in said cause, these defendants pray that this their petition for an appeal may be allowed without bond.

Defendants further pray that a transcript of the record proceedings and papers upon which said order was made, duly authenticated, may be sent to the Supreme Court of the United States at Washington, D. C.

This the 7th day of September, 1932.

Greek L. Rice, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[fol. 62a] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Filed September 17, 1932

This day this cause came on to be heard on the application of the defendants in the above entitled cause for an appeal to the Supreme Court of the United States from the final decree rendered in this cause by a specially constituted Three-Judge Court granting the plaintiff's application for a permanent injunction on the 16th day of August, 1932, it is hereby ordered, adjudged and decreed that said appeal be and the same is hereby allowed, and it appearing to the satisfaction of the Court that this suit is a suit against the State of Mississippi, its officers, agents and employees, it is hereby further ordered, adjudged and decreed that pending an appeal from said decree in said cause to the Supreme Court of the United States an appeal bond in the sum of $500.00 shall be and is hereby required, said appeal being granted upon bond being given by the Appellants in the sum of $500.00 conditioned according to law.

Ordered, adjudged and decreed this the 17th day of September, 1932.

Rufus E. Foster, Circuit Judge. E. R. Holmes, District Judge.

[fol. 63] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENTS OF ERROR—Filed September 7, 1932

Now come the defendants in the above styled cause by Greek L. Rice, Attorney General of the State of Mississippi, and J. A. Lauderdale, Assistant Attorney General of the State of Mississippi, and assign the following grounds of error upon which they will rely on their appeal from a decree made by this Court on the 16th day of August, 1932, in the above styled cause:

I

The Court erred in overruling the motion to dismiss the original bill for the following reasons, to wit:

(a) There is no equity on the face of the bill.

(b) A court of equity is without jurisdiction in this case.

(c) Plaintiff is endeavoring to prevent the deprivation of an alleged political right. A court of equity has no jurisdiction in said cause.

(d) Under the facts stated in the original bill plaintiff is not entitled under the law to have his name placed on the ballot as a candidate for Congress from the state at [fol. 64] large.

(e) The decree of the Court is inefficacious.

II

The Court erred in granting the permanent injunction herein for the following reasons:

(a) There is no equity on the face of the bill.

(b) Under the facts stated in the original bill and admitted in the answer the Federal Court in equity is without jurisdiction in this case.

(c) Under the facts stated in the original bill, and admitted in the answer, plaintiff is not entitled to have his name placed on the ballot as a candidate for Congress from the State of Mississippi.

(d) The decree of this Court is inefficacious and of no valid and binding effect.

(e) House Bill No. 197, Acts Regular Session of the Legislature of 1932, does not contravene any provision of the Federal Constitution.

Respectfully submitted.

Greek L. Rice, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[fols. 64-a & 64-b] Bond on appeal for $500.00, approved and filed September 22, 1932, omitted in printing.

[fol. 65] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed September 7, 1932

1. Original bill filed by complainants, with exhibits thereto.

2. Order organizing specially constituted Three-Judge Court.

3. Motion to dismiss the original bill.

4. Motion to amend prayer to original bill.

5. Order allowing amendment to prayer of original bill.

6. Order or decree overruling the motion to dismiss original bill and granting temporary injunction.

7. Answer of defendants.

7½. Motion for Perpetual Injunction.

8. Decree of the Court granting permanent injunction.

9. Opinion, statement of fact and conclusions of law by Judge Foster.

10. Dissenting opinion by Judge Holmes.

11. Petition for appeal with supersedeas. (Inasmuch as exhibits are heretofore made a part of the record, do not [fol. 66] copy exhibits to petition).

12. Opinion of Cardozo, Justice of the United States Supreme Court, denying the petition for appeal with supersedeas.

13. Petition for appeal by defendants.

14. Assignments of error by defendants.

15. Order or decree of Honorable Rufus E. Foster, Circuit Judge, Honorable Ben C. Dawkins and Honorable E. R. Holmes, District Judges, granting the appeal.

Greek L. Rice, Attorney General, and J. A. Lauderdale, Assistant Attorney General, Attorneys for Defendants.

[fol. 67] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 68] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON BY THE APPELLANTS FOR A REVERSAL OF THIS CASE AND DESIGNATION TO PRINT ENTIRE RECORD—Filed Oct. 3, 1932

The Court below erred in overruling the motion to dismiss the original bill, in granting a preliminary injunction and in granting the perpetual injunction for the following reasons, to-wit:

I

There is no equity on the face of the bill—

(a) Because plaintiff had a plain, speedy, complete and adequate remedy at law.

(b) Because there is no probability of a multiplicity of suits.

II

A court of equity is without jurisdiction in this cause—

(a) Because the amount in controversy does not exceed $3,000.00.

(b) Because a Federal Court of equity has no jurisdiction to prevent the deprivation of a political right.

[fol. 69] III

Under the facts stated in the bill, plaintiff is not entitled to have his name placed on the ballot as a candidate for Congress from the state at large.

IV

The decree of this court would be inefficacious—

(a) Because the election could be held without the expenditure of public funds.

(b) Because the Governor must approve the sample ballot. No injunction is prayed for against him.

(c) Because an injunction against the election commissioners of Hinds County would not be effective.

(d) Because a decree of the court could not be enforced.

(e) Because Congress is the judge of the election of its own members, and a decree of this court would not be controlling on Congress.

(f) The power to prescribe the time, place and manner of electing members of Congress is by the Constitution of the United States vested in the State Legislature subject to the power of Congress to make or alter such state regulations, and the courts have no jurisdiction or power in reference thereto.

V

House Bill No. 197, Regular Session of the Legislature of 1932, does not contravene any provision of the Constitution of the United States of the laws thereof.

* * * The appellant as its designation of parts of the record to be printed states that the entire record will be necessary to a proper consideration of the case.

Respectfully submitted.

Greek L. Rice, Attorney General; J. A. Lauderdale, Assistant Attorney General, Attorney- for Appellants.

Endorsed on cover: File No. 37,121. S. Mississippi D. C. U. S. Term No. 424. Walker Wood, Secretary of State of the State of Mississippi, et al., appellants, vs. Stewart C. Broom. Filed October 3, 1932. File No. 37,121.